Supreme Court, U.S.
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No. _____

In The

# Supreme Court of the United States

IN RE: MICHAEL R. SHEMONSKY,

*Petitioner.*

**PETITION FOR WRIT OF MANDAMUS**

MICHAEL R. SHEMONSKY
268 Washington Street
East Stroudsburg, PA 18301
570-421-8260

## QUESTIONS PRESENTED

1. Can Judge Vanaskie issue an order from the bench without a complaint or adverse party?

2. Can the F.B.I. arrest a citizen without a warrant, indictment or due cause?

3. Can a United States District Court judge commit perjury in an F.B.I. complaint?

4. Can an Assistant U.S. Attorney have you arrested, to keep you out of harm's way, because the U.S. Marshals were ordered to commit premeditated murder?

5. Can an Assistant U.S. Attorney call Petitioner's son, a minor at the time of the phone call, in an effort to intimidate him and libel Petitioner?

6. Can Judge Vanaskie inflict serious and irreparable harm to Atlantic Financial via an injunction on Petitioner?

7. Can Judge Vanaskie issue an injunction when the pending actions were removals from state court?

8. Can an illegal arrest and commitment toll the statute for the Federal Claims Court?

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## PETITION FOR WRIT OF MANDAMUS

Petitioner, Michael R. Shemonsky, respectfully prays that a Writ of Mandamus be issued upon the United States Court of Appeals for the Federal Circuit to compel them to void the injunction against Michael R. Shemonsky and to return the assets of Atlantic Financial plus court awarded damages from 1-11-90.

## OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Federal Circuit appears in Appendix A. The unpublished opinion of the United States Court of Federal Claims appears in Appendix B.

## JURISDICTION

The Court of Appeals order in this matter was filed June 10, 1999. This court's jurisdiction is invoked under Title 28 USC Section 1651(A).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V to the United States Constitution is set forth in Appendix C, exhibit to this petition.

## STATEMENT OF THE CASE

Michael R. Shemonsky, Petitioner, is the alter ego of Atlantic Financial, a savings and loan.

On May 1, 1982, Atlantic Financial loaned the United States government $458,654,000.00 at 45% interest compounded daily for supervisory goodwill contracts.

On August 9, 1989, the United States government breached its supervisory goodwill contracts with the passage of FIRREA, a Fifth Amendment taking.

On January 11, 1990, M. Danny Wall, the unconstitutionally appointed director of the Office of Thrift Supervision illegally and fraudulently seized Atlantic Financial even though our receivable totaled $1,064,422,970.00 from the United States government (United States v. Winstar Corp. et al., 518 US 839 (1996)).

On January 7, 1994, the F.B.I. illegally arrested the Petitioner without a warrant or indictment. (Violation of the Fifth Amendment to the Constitution.)

On January 16, 2003, Thomas Vanaskie, Chief Judge of the United States District Court for the Middle District of Pennsylvania, ordered an injunction from the bench without a hearing, restraining Petitioner from filing any papers in any court pertaining to his illegal arrest and/or Atlantic Financial. (Violation of the Fifth Amendment to the Constitution.)

On August 17, 2004, the Third Circuit Court of Appeals denied judicial fraud on case 90-5392, subject to Supreme Court review.

## REASONS FOR GRANTING THE WRIT

1. Shemonsky, the party seeking the writ, does not have any other means to obtain the desired relief due to fraud by the United States government.

2. Shemonsky was harmed by a prejudicial appeal by the United States Court of Appeals for the Federal Circuit.

3. The United States Court of Appeals for the Federal Circuit erred and abused its discretion.

4. The Judge of the United States Court of Federal Claims erred and abused his discretion.

5. The writ raises important and novel problems or issues of law.

## REASONS FOR NOT MAKING APPLICATION IN THE DISTRICT

The writ raises constitutional issues concerning the illegal arrest by the F.B.I. and subsequent commitment by the court, as well as the illegal restraining order by the United States District Court for the Middle District of Pennsylvania with multiple criminal violations by the judicial officers of the court.

## EXCEPTIONAL CIRCUMSTANCES TO WARRANT THE COURT'S DISCRETIONARY POWERS

Petitioner bought stocks and bonds in a savings and loan, Atlantic Financial Federal, and has been arrested by the F.B.I. and committed to Butner North Carolina Mental Hospital. Also Petitioner has numerous injunctions against him, put in place by the Third Circuit Court of Appeals, the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the Middle District of Pennsylvania. Petitioner has proven to the F.B.I. Bank Fraud Squad in Philadelphia, Pennsylvania, that the savings and loan crisis was indeed a beguiling by Ronald Reagan and George H.W. Bush. Petitioner has found no other means of obtaining relief from any other court.

## CONCLUSION

It is the opinion of Petitioner that there has been a conspiracy by the United States government and its judicial system. Therefore, petitioner seeks relief through the exercise of this Court's powers.

Dated: December 7, 2004

Respectfully submitted,

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570-421-8260

## APPENDIX A

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

**United States Court of Appeals**
**for the Federal Circuit**

99-5044

MICHAEL R. SHEMONSKY,

Plaintiff-Appellant,

and

ATLANTIC FINANCIAL,

Plaintiff,

v.

THE UNITED STATES,

Defendant-Appellee.

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DECIDED: JUNE 10, 1999

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Before PLAGER, *Circuit Judge*, FRIEDMAN, *Senior Circuit Judge*, and CLEVENGER, *Circuit Judge*.

PER CURIAM.

### DECISION

The order of the Court of Federal Claims dismissing the appellant Shemonsky's complaint for lack of subject matter jurisdiction is *affirmed*.

## OPINION

Shemonsky's *pro se* complaint alleged: "On January 11, 1990 the Office of Thrift Supervision declared Atlantic [Financial] insolvent and ordered it closed." On the same day, the Office also "dismissed the Board of Directors of Atlantic for Criminal Fraud," "entered into [a] . . . purchase and assumption agreement with Atlantic," and "appointed the Federal Deposit Insurance Company . . . as a . . . receiver."

On January 23, 1990, "the stockholders [of Atlantic] elected Shemonsky director." That same day, "the Board of Directors of Atlantic elected Shemonsky, Chairman of the Board, President, Chief Executive Officer and Chief Financial Officer."

Later in 1990, Mr. Shemonsky sought to enjoin the receivership. The district court dismissed the suit for lack of jurisdiction. *See Shemonsky v. Office of Thrift Supervision*, 733 F.Supp. 892, 895 (M.D. Pa.), *aff'd*, 922 F.2d 833 (3d Cir. 1990), *cert. denied*, 499 U.S. 965 (1991).

In January, 1999, Shemonsky filed this suit. He requested the court to enjoin the receivership "or award damages of $202,547,790,000 plus interest and costs."

The court, *sua sponte*, dismissed the complaint. It stated that Shemonsky sought "an injunction regarding the receivership order" and concluded that because "the jurisdiction of the Court of Federal Claims does not extend to injunctive or declaratory relief. . . . we must deny plaintiffs' complaint for injunctive relief."

II.

To the extent that the complaint sought an injunction against the receivership, the Court of Federal Claims correctly determined that it was beyond its jurisdiction. That court does not have general equity jurisdiction to grant injunctive relief. *See United States v. King*, 395 U.S. 1, 2-5 (1969); *Nat'l Air Traffic Controllers Ass'n v. United States*, 160 F.3d 714, 716 (Fed. Cir. 1998).

The Court of Federal Claims did not deal with Shemonsky's alternative claim for damages of $202 billion. That claim, however, also was beyond the court's jurisdiction.

All the events on which Shemonsky bases his claim occurred in 1990, nine years before he filed his complaint in the Court of Federal Claims. The applicable statute of limitations requires that the complaint must be filed within six years after the "claim accrues." 28 U.S.C. § 2501. This six-year period "commences to run when claimants know or should know of their potential claims." *See Chevron U.S.A., Inc. v. United States*, 923 F.2d 830, 834 (Fed. Cir. 1991).

The allegations in Shemonsky's complaint set forth above show that he was aware of his claim in 1990. Indeed, in that year he filed a district court suit seeking the same injunctive relief he sought in the present case. In the Court of Federal Claims the statute of limitations is jurisdictional. *See Rogers v. United States*, 801 F.2d 1334, 1335 (Fed. Cir. 1986). Since Shemonsky did not file his complaint within six years after his claim accrued, the Court of Federal Claims had no jurisdiction to entertain his claim for damages. The court's order dismissing the

claim for injunctive relief for lack of jurisdiction also properly covered the claim for damages.

## APPENDIX B

## IN THE UNITED STATES COURT OF FEDERAL CLAIMS

**No. 99-13 C**

**MICHAEL R. SHEMONSKY AND ATLANTIC FINANCIAL**

**v.** **JUDGMENT**

**UNITED STATES OF AMERICA** (Filed Jan. 14, 1999)

Pursuant to the court's Order Dismissing Complaint, filed January 12, 1999,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that the complaint is dismissed for lack of subject-matter jurisdiction.

Margaret M. Earnest
Clerk of Court

**January 14, 1999** By: /s/ [Illegible]
Deputy Clerk

***NOTE:*** As to appeal, 60 days from this date, see RCFC 72, re number of copies and listing of *all plaintiffs*. Filing fee is $105.00.

**UNITED STATES COURT OF FEDERAL CLAIMS**
**January 12, 1999**

**No. 99-13 C**

**MICHAEL R. SHEMONSKY and ATLANTIC FINANCIAL,**

**Plaintiffs,**

**versus**

**UNITED STATES OF AMERICA,**

**Defendant.**

## ORDER DISMISSING COMPLAINT

Plaintiff Shemonsky is proceeding *pro se*. Plaintiff Atlantic Financial apparently is represented by plaintiff Shemonsky, its chairman, president, chief operating officer and chief financial officer. *But see* RCFC 81(d)(8) ("A corporation may only be represented by counsel."). This order addresses plaintiffs' complaint filed January 8, 1999.

Although the facts underlying the complaint are unclear, plaintiffs seem to allege that Atlantic Financial (presumably a bank or financial institution) has experienced immediate and irreparable harm as the result of a receivership order issued by the Federal Deposit Insurance Corporation. This order was apparently issued in conjunction with action of the office of Thrift Supervision declaring Atlantic Financial insolvent and ordering it closed. Plaintiffs now seek an injunction regarding the receivership order.

Plaintiffs' claim fails for lack of jurisdiction. Under the Tucker Act, 28 U.S.C. § 1491(a)(1), the jurisdiction of this

court is generally limited to suits against the United States for money presently due. Courts have consistently held that except for limited circumstances, none of which are applicable here, the jurisdiction of the Court of Federal Claims does not extend to injunctive or declaratory relief. *See, e.g., United States v. King*, 395 U.S. 1 (1969). Based on this explicit jurisdictional limitation, we must deny plaintiffs' complaint for injunctive relief.

Accordingly, it is ORDERED that plaintiffs' complaint be DISMISSED for lack of subject-matter jurisdiction.

/s/ James T. Turner
James T. Turner
Judge

## APPENDIX C

### The Constitution

**AMENDMENT V [1791]**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.